

THE HON'BLE MR JUSTICE V.V.S.RAO

-
WRIT PETITION No.17451 of 2006

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07.9.2006

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Between:

Vasupalli Nookaraju, S/o.Nookanna
And another

... Petitioners

AND

The Commisioner (ROM), O/o.Chief Commissioner of Land
Administration,
Andhra Pradesh, Hyderabad And others

... Respondents

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ORDER:

The two petitioners are allegedly great grandsons of late Vasupalli Musalamma. She was allegedly inducted into possession of agricultural dry land admeasuring Acs.0.74 cents in R.S.No.294/5 situated at Kapuluppada Village of Bheemunipatnam Mandal in Visakhapatnam District. This happened in 1930 and Musalamma allegedly got possession from Raja of Vizianagaram. It is alleged that as per the correlation statement and survey land records prepared during resurvey and settlement operation in 1954-1958, the land in O.S.No.453/A1 (corresponding to R.S.Nos.314, 329/2, 327/13, 327/14, 116/19 and 116/20) classified as Konda Poramboke and the land in O.S.No.453/A (corresponding to R.S.Nos.303/8 and 294/5) shown as occupied by Vasupalli Musalamma. Therefore, having come to know that they are entitled to ryotwari patta under Andhra Pradesh (Andhra Area) Estates (Abolition and Conversion into Ryotwari) Act, 1948 (the Act, for brevity), the petitioners filed an application under Section 11(a) of the Act before the Settlement Officer, the third respondent herein.

The Settlement Officer, the third respondent herein, dismissed the claim petition made by the petitioners, under Section 11(a) of the Act, on two grounds. First, the documentary evidence produced by the

petitioners conclusively proves that the petitioners and their ancestors never inducted into possession before the crucial date and the land is known as ryothy land. Secondly, the claim petition for grant of ryotwari patta was submitted after lapse of 44 years from the date of introduction of settlement rates in the village and the reasons for filing the claim with the delay were not explained. Indeed, the Settlement Officer considered the documents produced by the petitioners and the documents produced by the Mandal Revenue Officer, Bheemunipatnam, in detail before recording a finding that petitioners were not in possession of the land.

Against the order dated 23.2.2004 passed by the Settlement Officer rejecting the claim that grant of ryotwari patta, the petitioners preferred revision petition under Section 5(2) of the Act. The second respondent dismissed the same observing that petitioners filed claim petition for grant of ryotwari patta on 17.6.2003 with a delay of 29 years and that by reason of G.O.Ms.No.400, Revenue (J1) Department, dated 24.4.1993, the power of the Settlement Officer to condone the delay in filing belated applications was taken away. The second respondent also observed that the rejection of the claim of the Settlement Officer is justified. Yet again the petitioners preferred revision under Section 7(d) of the Act before the first respondent, who dismissed the same on the ground that the petitioners did not produce any evidence in favour of their claim and that the claim made was barred by limitation. Against this order this writ petition is filed.

Learned Counsel for the petitioners submits that the petitioners and their ancestors have been in possession and enjoyment of the land prior to coming into force of the Act, that a community hall was constructed in about 40 Sq.yards of land, after obtaining consent of the petitioners, and that no local enquiry was conducted by the fourth respondent before objecting the claim of the petitioners before the Settlement Officer. Lastly, he submits that the law of limitation has no application to a claim petition under Section 5(a) of the Act. **Per contra**, learned Assistant Government Pleader for Revenue (General) opposed writ petition placing reliance on Andhra Pradesh (Andhra Area) Estates (Abolition and Conversion into Ryotwari) Grant of Ryotwari Patta Rules, 1973 (the Rules, for brevity) promulgated vide G.O.Ms.No.50, dated 16.1.1974 in exercise of power under Section 67(2)(d) read with Section 11 of the Act.

Rule 2 of the Rules reads as under.

2. (1) Any enquiry for the grant of a ryotwari patta under

Section 11 may be made by the Settlement Officer either *suo motu* at any time or on an application made by a ryot.

(2) Any ryot claiming a patta under Section 11(a) in respect of ryot lands which immediately before the notified date were properly included or ought to have been properly included in his holdings immediately before the notified date, may file an application in writing before the Settlement Officer either in person or by registered post at any time after the notified date but before the ryotwari settlement of the estate is effected under Section 22.

(3) Every such application shall be in the Form appended to these rules and it shall be signed and verified by the applicant and shall bear a Court-fee stamp of the value of rupee one.

(4) Notwithstanding anything in sub-rule (2) but subject to the provision of sub-rule (5), where in respect of an estate in which the ryotwari settlement under Section 22 has already been effected before the commencement of these rules, such an application may be filed before the Settlement Officer within thirty days from the date of such commencement.

Provided that the Settlement Officer may, condone the delay, if such delay is caused due to the pendency of a dispute in a Court or for good and sufficient reasons shown by the applicant for the delay caused, and thereafter entertain an application filed before him after said period of thirty days.

(5) Where an application filed by a ryot for grant of ryotwari patta in respect of a land has already been considered and disposed otherwise than on grounds of limitation by the Settlement Officer before the date of commencement of these rules, it shall not be open to the said ryot to file another application under sub-rule (4) in respect of the same land after the date of commencement of these rules.

As per sub-rule (2) of Rule 2 of the Rules, a ryot claiming patta under Section 11(a) of the Act in respect of ryot lands, before the notified date whether or not such lands are included in the Estate, may file an application in the form appended to the Rules, at any time after the notified date but before the ryotwari settlement is effected under Section 22 of the Act. Be it noted that under Section 22 of the Act, the Settlement Officer shall effect ryotwari settlement of the Estate in accordance with the settlement notification published by the Government duly adopting the principles adumbrated in sub-sections (2) to (4) of Section 22 of the Act.

Sub-rule (4) of Rule 2 of the Rules deals with different situation.

It lays down that when ryotwari settlement is effected under Section 22 of the Act before the commencement of the Rules in G.O.Ms.No.50, dated 16.1.1974 (the Rules), a ryot may make an application under Section 11(a) of the Act within thirty days from the commencement of the Rules. Therefore, if the estate is not settled under Section 22 of the Act, the ryot can file an application under Section 11(a) of the Act, at any time, after the notified date, as defined in Section 2(10) of the Act and if the estate is settled under Section 22 of the Act before commencement of the Rules, such application has to be filed within thirty days after the commencement Rules. In this case, having regard to the facts, sub-rule (4) of Rule 2 of the Rules applies and, therefore, the petitioners ought to have filed application under Section 11(a) of the Act within thirty days from 02.7.1974 (date of publication of the Rules in Andhra Pradesh Gazette). The petitioners made application, as noticed by the second respondent, on 17.6.2003. Thus the claim under Section 11(a) of the Act was made after a period of twenty nine (29) years. As seen from the record, no application was filed before the Settlement Officer seeking condonation of delay in filing the claim petition. The learned counsel for the petitioners before the Settlement Officer though made an attempt to show sufficient cause for the delay that was not accepted by the Settlement Officer. Further, through proviso to sub-rule (4) of Rule 2 of the Rules was inserted by reason of the notification issued vide G.O.Ms.No.551, dated 19.5.1986, as observed by the second respondent, the power to condone the delay under the said proviso was taken away by another amendment G.O.Ms.No.400, dated 24.4.1993. Even on this core issue also, the submission of the learned counsel for the petitioners that the petitioners should now be given opportunity to seek condonation of delay cannot be countenanced.

The Settlement Officer as well as the first respondent also considered the case of the petitioners on merits. The first respondent in his order dated 16.6.2006 confirming the orders of the respondents 2 and 3, observed as under.

In the present case the petitioner has not produced any evidence showing how forefathers of the applicant were inducted into possession by Maharaja of Vizianagaram and how they have continued in possession thereafter. The only evidence, petitioner has produced in his favour, may be the entries in the SLR Records where it was alleged by him that his grandmother's name existed against Sy.No.294/5 showing her possession of this survey number to an extent of

Acs.0.74 cts in the year 1954. All other records are alleged to have got destroyed in the fire accident.

The Settlement Officer and Joint Collector, Visakhapatnam has considered the aspect of limitation and came to conclusion that the petitioner has not produced any good and sufficient reasons for condonation of delay and on that ground, among others, he has dismissed the claim of the petitioner as time barred. The Director of Settlements, A.P., Hyderabad has not also interfered with the orders of Settlement Officer and Joint Collector, Visakhapatnam on the same ground.

The primary responsibility for condonation of delay lies with the Settlement Officer before entertaining the application u/s 11(a) of State Estate Abolition Act. Once he has come to the conclusion that there are not good and sufficient reasons for condoning the delay and dismissing the application on that ground, such finding can be set-aside only if the petitioner is able to produce additional evidence before appellate authority to get such finding set-aside. The petitioner is not able to produce any additional evidence before this authority also. Therefore, I do not find any reason to interfere with the findings of the Settlement Officer as well as the Director of Settlement, A.P. Hyderabad and accordingly, I dismiss the Revision Petition.

This Court has perused the entire material placed on record, which would support the conclusions reached by the Settlement Officer as well as second Revisional Authority. Whether the petitioners' application claiming ryotwari patta under Section 11(a) of the Act satisfied requirements or not, is a question of fact. The Original Authority considered the material before it and concluded that the petitioners failed to prove their possession prior to coming into force of the Act. The petitioners were rightly denied ryotwari patta. The impugned order does not suffer from any infirmity.

The writ petition, for the above reasons, is dismissed. No costs.

(V.V.S.RAO, J)

September 07, 2006.

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